Supreme Court of the United States.

No. 294.—October Term, 1903.

William J. Buttfield, Plaintiff in Error, vs. Nevada N. Stranahan, Collector of the Port of New York. | In error to the Circuit Court of the United States for the Southern District of New York.

[February 23, 1904.]

This case presents for determination the question of the constitutionality of a statute known as the tea inspection act, approved March 2, 1897. (29 Stat. 604.) The act is copied in full in the margin.*

*An Act To prevent the importation of impure and unwholesome tea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after May first, eighteen hundred and ninety-seven, it shall be unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards provided in section three of this act, and the importation of all such merchandise is hereby prohibited.

Sec. 2. That immediately after the passage of this act, and on or before February fifteenth of each year thereafter, the Secretary of the Treasury shall appoint a board, to consist of seven members, each of whom shall be an expert in teas, and who shall prepare and submit to him standard samples of tea; that the persons so appointed shall be at all times subject to removal by the said Secretary, and shall serve for the term of one year; that vacancies in the said board occurring by removal, death, resignation, or any other cause shall be forthwith filled by the Secretary of the Treasury by appointment, such appointee to hold for the unexpired term; that said board shall appoint a presiding officer, who shall be the medium of all communications to or from such board; that each member of said board shall receive as compensation the sum of fifty dollars per annum, which, together with all necessary expenses while engaged upon the duty herein provided, shall be paid out of the appropriation for "expenses of collecting the revenue from customs."

Sec. 3. That the Secretary of the Treasury, upon the recommendation of the said board, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the custom-houses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards; that said Secretary shall procure a sufficient number of other duplicate samples of such standards to supply the importers and dealers in tea at all ports desiring the same at cost. All teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be deemed within the prohibition of the first section hereof.

Sec. 4. That on making entry at the custom-house of all teas, or merchandise described as tea, imported into the United States, the importer or consignee shall

On January 20, 1902, eight packages of tea were imported into the port of New York, per the steamer Adana, by a firm of which the plaintiff in error was the general partner. The tea was entered for import at the New York custom-house, and was stored in a bonded warehouse. At that time certain standards, enumerated in the margin,† which were selected by the board of tea inspectors, had been put in force by the Treasury regulations under said act of March 2, 1897.

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give bond to the collector of the port that such merchandise shall not be removed from the warehouse until released by the collector, after it shall have been duly examined with reference to its purity, quality, and fitness for consumption; that for the purpose of such examination samples of each line in every invoice of tea shall be submitted by the importer or consignee to the examiner, together with the sworn statement of such importer or consignee that such samples represent the true quality of each and every part of the invoice and accord with the specifications therein contained; or in the discretion of the Secretary of the Treasury, such samples shall be obtained by the examiner and compared by him with the standards established by this act; and in cases where said tea, or merchandise described as tea, is entered at ports where there is no qualified examiner as provided in section seven, the consignee or importer shall in the manner aforesaid furnish under oath a sample of each line of tea to the collector or other revenue officer to whom is committed the collection of duties, and said officer shall draw or cause to be drawn samples of each line in every invoice and shall forward the same to a duly qualified examiner as provided in section seven: *Provided, however*, That the bond above required shall also be conditioned for the payment of all custom-house charges which may attach to such merchandise prior to its being released or destroyed (as the case may be) under the provisions of this act.

SEC. 5. That if, after an examination as provided in section four, the tea is found by the examiner to be equal in purity, quality, and fitness for consumption to the standards hereinbefore provided, and no re-examination shall be demanded by the collector as provided in section six, a permit shall at once be granted to the importer or consignee declaring the tea free from the control of the custom authorities; but if on examination such tea, or merchandise described as tea, is found, in the opinion of the examiner, to be inferior in purity, quality, and fitness for con-

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† No. 1. Formosa Oolong.
No. 2. Foochon Oolong.
No. 3. North China Congon.
No. 4. South China Congon.
No. 5. India Tea (used for Ceylon tea.)
No. 6. Pingsuey, green tea.
No. 7. Country green tea.
No. 8. Japan tea, pan fried, (used for sun dried.)
No. 9. Japan tea, basket fried.
No. 10. Japan tea, dust or fannings.
No. 11. Capers (used for scented orange Pekoe.)
No. 12. Canton Oolong (*a*.)
No. 13. Scented Canton (*a*.)

The eight packages of tea in question were embraced in the class known as "Country green teas," numbered 7 on list of standards. The tea was examined on February 7, 1902, and was rejected as "inferior to standard in quality." By the term quality as thus used was meant the cup quality of the tea, that is to say, its taste and flavor. An appeal was taken by the importer to the board of general appraisers, and that board, on March 10, 1902, certified to the collector that "the said tea is inferior in quality

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sumption to the said standards the importer or consignee shall be immediately notified, and the tea, or merchandise described as tea, shall not be released by the custom-house, unless on a re-examination called for by the importer or consignee the finding of the examiner shall be found to be erroneous: *Provided*, That should a portion of the invoice be passed by the examiner, a permit shall be granted for that portion and the remainder held for further examination, as provided in section six.

SEC. 6. That in case the collector, importer or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to a board of three United States general appraisers, to be designated by the Secretary of the Treasury, and if such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption to the proper standards, a permit shall be issued by the collector for its release and delivery to the importer; but if upon such final re-examination by such board the tea shall be found to be inferior in purity, quality, and fitness for consumption to the said standards, the importer or consignee shall give a bond, with security satisfactory to the collector, to export said tea or merchandise described as tea, out of the limits of the United States, within a period of six months after such final re-examination; and if the same shall not have been exported within the time specified, the collector, at the expiration of that time, shall cause the same to be destroyed.

SEC. 7. That the examination herein provided for shall be made by a duly qualified examiner at a port where standard samples are established, and where the merchandise is entered at ports where there is no qualified examiner, the examination shall be made at that one of said ports which is nearest the port of entry, and that for this purpose samples of the merchandise, obtained in the manner prescribed by section four of this act, shall be forwarded to the proper port by the collector or chief officer at that port of entry; that in all cases of examination or re-examination of teas, or merchandise described as tea, by examiners or boards of United States general appraisers under the provisions of this act, the purity, quality, and fitness for consumption of the same shall be tested according to the usages and customs of the tea trade, including the testing of an infusion of the same in boiling water, and, if necessary, chemical analysis.

SEC. 8. That in cases of re-examination of teas, or merchandise described as teas, by a board of United States general appraisers in pursuance of the provisions hereof, samples of the tea, or merchandise described as tea, in dispute, for transmission to such board for its decision, shall be put up and sealed by the examiner in the presence of the importer or consignee if he so desires, and transmitted to such board, together with a copy of the finding of the examiner, setting forth the cause of condemnation and the claim or ground of the protest of the importer relating to the same, such samples, and the papers therewith, to be distinguished by such mark

to the standard prescribed by law," and accordingly overruled the appeal. The firm was notified of the decision on March 12, 1902.

In November following the plaintiff in error—who had acquired the interest of his partner in the tea—applied to the collector for permission to withdraw the tea for consumption, on payment of the duties. The request was refused. Application was then made for the release of the tea from bond in order to export it. This was also refused on the ground that the tea had been finally rejected under the act of March 2, 1897, more than six months previous to the application. The plaintiff in error was also notified that the tea would be ordered to the public stores for destruction.

This action was commenced in the Supreme Court of the State of New York, county of New York, against the collector of the port of New York, to recover damages for the alleged wrongful seizure, removal and destruction of the tea in question. Averments were made of the importation, storing, tender of duties and refusal to accept the same, and of demand for the tea and refusal to deliver. A general denial was filed. The action being on account of acts done by the defendant under the revenue laws of the United States, as collector of customs, it was removed on his application to the Circuit Court of the United States for the Southern District of New York.

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that the same may be identified; that the decision of such board shall be in writing, signed by them, and transmitted, together with the record and samples, within three days after the rendition thereof, to the collector, who shall forthwith furnish the examiner and the importer or consignee with a copy of said decision or finding. The board of United States general appraisers herein provided for shall be authorized to obtain the advice, when necessary, of persons skilled in the examination of teas, who shall each receive for his services in any particular case a compensation not exceeding five dollars.

SEC. 9. That no imported teas which have been rejected by a customs examiner or by a board of United States general appraisers, and exported under the provisions of this act, shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition.

SEC. 10. That the Secretary of the Treasury shall have the power to enforce the provisions of this act by appropriate regulations.

SEC. 11. That teas actually on shipboard for shipment to the United States at the time of the passage of this act shall not be subject to the prohibition hereof, but the provisions of the act entitled "An act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, shall be applicable thereto.

SEC. 12. That the act entitled "An act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, is hereby repealed, such repeal to take effect on the date on which this act goes into effect.

Approved, March 2, 1897.

At the trial of the case before Circuit Judge Coxe and a jury, the exhibit reproduced in the margin was introduced in evidence.*

As indicated on this exhibit, the Country green teas thereon designated were arranged in their order of quality, from the highest to the lowest, No. 1 being the highest grade, and No. 17 the lowest. The designation in each perpendicular column represented the teas grown in a particular

*EXHIBIT No. 8.

Schedule of Country Green Teas arranged in Order of Quality.

1 Choicest Moyune	Choicest Teenkai					
2 Choice Moyune	Choice Teenkai					
3 Finest Moyune	Finest Teenkai					
4 Fine to Finest Moyune	Fine to Finest Teenkai					
5 Fine Moyune						
6 On Fine Moyune	Fine Teenkai					
7 Fully Good Medium Moyune	On Fine Teenkai					
8 Good Medium Moyune	Fully Good Medium Teenkai	Finest Fychow				
9 On Good Medium Moyune	Good Medium Teenkai	Fine "				
10 Fair Moyune	On Good Teenkai	Good Medium Fychow		Finest Wenchow		
11 Good Common Moyune	Fair Teenkai	Fair "		Fine "		
12 Common Moyune	Good Common Moyune	Good Common "		Good Med. "		Good, clean, genuine Shanghai packed
13	Common Teenkai	Common		Fair "		
14				Good Common		
15				Common "		
16						Mixed, Shanghai packed
17						Common, refined and adulterated Shanghai packed

district, and all the teas enumerated on the same horizontal line were considered as being equal in grade.

The chairman of the Board of Tea Experts of the Treasury Department testified that the standard for Country green teas in force at the time the tea in question was imported was Hyson of a Fine Teenkai, or No. 6 on the list of standards, and that before fixing this standard "the board made diligent search for any Country green teas of lower grades—Hysons of lower grades—of pure teas on the New York market obtainable by the trade, and were unable to find any." The term Hyson, it may be observed, indicated that the tea was made out of the coarsest leaves. For the plaintiff it was testified that the quality of the tea in controversy corresponded in quality with the grade No. 7 on Exhibit 8; while the evidence for the government was to the effect that it would grade as Fair Fychow, No. 11 on Exhibit 8. The testimony also tended to show that the tea in question differed only in respect to the cup quality from the government standard; the evidence for the government being that it was "a tea of a decidedly low grade, . . . a pure tea, but of low quality."

At the close of the evidence the court overruled a motion to direct a verdict for the plaintiff, and an exception was reserved. Thereupon the court, granting a motion on behalf of the defendant, instructed that the only question was as to the constitutionality of the statute under which the defendant, as collector of the port acted, and directed a verdict in his favor. Upon the judgment entered on the verdict, which was returned in accordance with this instruction, the case was brought directly to this court.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the Court.

The assignments of error assail the act of the trial court in denying the motion for the direction of a verdict in favor of plaintiff and in giving a peremptory instruction in favor of the defendant. Summarized, the contentions are as follows: 1st, that the act of March 2, 1897, confers authority to establish standards, and that such power is legislative and cannot constitutionally be delegated by Congress to administrative officers; 2d, that the plaintiff in error had a vested right to engage as a trader in foreign commerce and as such to import teas into the United States, which as a matter of fact were pure, wholesome and free from adulteration, fraud and deception, and which were fit for consumption; 3d, that the establishment and enforcement of standards of quality of teas, which operated to deprive the alleged vested right, constituted a deprivation of property without due process of law; 4th, that the act is unconstitutional, because it does not provide that notice and an opportunity to be

heard be afforded an importer before the rejection of his tea by the tea examiner, or the Tea Board of General Appraisers; and, 5th, that in any event the authority conferred by the statute to destroy goods upon the expiration of the time limit for their removal for export and the destruction of such property, without a judicial proceeding, was condemnation of property without hearing and the taking thereof without due process of law.

Whether the contentions just stated are tenable are the questions for consideration.

In examining the statute in order to determine its constitutionality we must be guided by the well-settled rule that every intendment is in favor of its validity. It must be presumed to be constitutional, unless its repugnancy to the Constitution clearly appears. (*Nicol* v. *Ames*, 173 U. S. 509, 514–515; *Gettysburg Park Case*, 160 U. S. 668, 680.)

The power to regulate commerce with foreign nations is expressly conferred upon Congress, and being an enumerated power is complete in itself, acknowledging no limitations other than those prescribed in the Constitution. (*Lottery Case*, 188 U. S. 321, 353–356; *Leisy* v. *Hardin*, 135 U. S. 100, 108.) Whatever difference of opinion, if any, may have existed or does exist concerning the limitations of the power, resulting from other provisions of the Constitution, so far as interstate commerce is concerned, it is not to be doubted that from the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise brought from foreign countries; not alone directly by the enactment of embargo statutes, but indirectly as a necessary result of provisions contained in tariff legislation. It has also, in other than tariff legislation, exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion. This is illustrated by statutory provisions which have been in force for more than fifty years, regulating the degree of strength of drugs, medicines and chemicals entitled to admission into the United States and excluding such as did not equal the standards adopted. (9 Stat. 237; Rev. Stat. sec. 2933 *et seq.*)

The power to regulate foreign commerce is certainly as efficacious as that to regulate commerce with the Indian tribes. And this last power was referred to in *United States* v. *43 Gallons of Whiskey*, (93 U. S. 194,) as exclusive and absolute, and was declared to be "as broad and as free from restrictions as that to regulate commerce with foreign nations." In that case it was held that it was competent for Congress to extend the prohibition against the unlicensed introduction and sale of spirituous liquors in the Indian country to territory in proximity to that occupied by the Indians, thus restricting commerce with them. We entertain no doubt that it was competent for Congress, by statute, under the power to regu-

late foreign commerce, to establish standards and provided that no right should exist to import teas from foreign countries into the United States, unless such teas should be equal to the standards.

As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised. This being true, it results that a statute which restrains the introduction of particular goods into the United States from considerations of public policy does not violate the due process clause of the Constitution.

That the act of March 2, 1897, was not an exercise by Congress of purely arbitrary power is evident from the terms of the law, and a consideration of the circumstances which led to its enactment. The history of the act and its proper construction, as also the reasons for deciding that the regulations of the Secretary of the Treasury establishing the standard here in question were warranted by the statute, were succinctly stated in the opinion of the Court of Appeals for the Second Circuit in *Buttfield* v. *Bidwell*, (96 Fed. Rep. 328,) and we adopt such statement. The court said:

"The basic question in this case is as to the true construction of the act of Congress of March 2, 1897, entitled 'An act to prevent the importation of impure and unwholesome tea.' Section 1 makes it unlawful 'to import or bring into the United States any merchandise as tea which is inferior in purity, quality and fitness for consumption to the standards provided in section 3 of this act, and the importation of all such merchandise is hereby prohibited.' Section 2 provides for the appointment by the Secretary of the Treasury, immediately after the passage of the act, and on or before February 15 of each subsequent year, of the board of tea experts, 'who shall prepare and submit to him standard samples of tea.' Section 3 provides that the Secretary of the Treasury, upon the recommendation of said board, 'shall fix and establish uniform standards of purity, quality and fitness for consumption of all kinds of teas imported into the United States,' samples of such standards to be deposited in various custom-houses, and supplied to importers and dealers at cost, and declares that all teas, or merchandise described as tea, of inferior purity, quality and fitness for consumption to such standards shall be deemed to be within the prohibition of the first section hereof. Sections 4–7 provide for the examination of importations of tea, for a re-examination by the board of general appraisers in case of a protest by the importer or collector against the finding of the primary examiner, and for testing the purity quality and fitness for consumption in all cases of examination or re-examination, 'according to the usages and customs of the tea trade, including the test of an infusion of the same in boiling water, and, if necessary, chemical analysis.' . . . The history of the enactment shows that the word 'quality' was industriously inserted to make the act a more stringent substitute for the existing legislation. By the act

of March 3, 1883, then in force, any merchandise imported 'for sale as tea,' adulterated with spurious or exhausted leaves, or containing such an admixture of deleterious substances as to make it 'unfit for use,' was prohibited; and exhausted leaves were defined to include any tea which had been deprived of its proper quality, strength or virtue by steeping, infusion, decoction or other means. Thus the importation of tea containing such an admixture of leaves as to be deprived of its proper quality or virtue by any method of treatment was prohibited. The act, however, contained no provision for the establishment of government standards; and the establishment of uniform standards in the interest of the importer and of the consumer had become a recognized necessity. In a report by the Senate Committee on Commerce, in 1897, the provision was suggested as designed, among other things, to protect the consumer against 'worthless rubbish,' and insure his 'receiving an article fit for use.' The report pointed out that the 'lowest average grade of tea ever before known was now being used' by our consumers, and proposed as a remedy the establishment of standards of the 'lowest grades of tea fit for use.' As originally introduced in the House, the bill prohibited the importation of 'any merchandise as tea which is inferior in purity or fitness for consumption to the standards provided in section 3 of this act.' It was amended in the Senate by inserting the word 'quality' between the words 'purity' and 'fitness for consumption' wherever they occurred in the House bill. The amendment evinces the intention of the Senate to authorize the adoption of uniform standards by the Secretary of the Treasury which would be adequate to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably or possibly so because of their inferior quality. The House concurred in the amendment, and the measure was enacted in its present terms. We conclude that the regulations of the Secretary of the Treasury are warranted by the provisions of the act."

The claim that the statute commits to the arbitrary discretion of the Secretary of the Treasury the determination of what teas may be imported, and therefore in effect vests that official with legislative power, is without merit. We are of opinion that the statute, when properly construed, as said by the Circuit Court of Appeals, but expresses the purpose to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably so because of their inferior quality. This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute. The case is within the principle of *Field* v. *Clark*, (143 U. S. 649,) where it was decided that the third section of the tariff act of October 1, 1890, was not repugnant to the Constitution as conferring legislative and treaty-making power on the President, because it authorized him to suspend the provisions of the act relating to the free introduction of sugar, molasses, coffee, tea and hides. We may say of the legislation in this case, as was said of the legislation considered in *Field* v. *Clark*, that it does not, in any real sense, invest administrative officials

with the power of legislation. Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted.

Whether or not the Secretary of the Treasury failed to carry into effect the expressed purpose of Congress and established standards which operated to exclude teas which would have been entitled to admission had proper standards been adopted, is a question we are not called upon to consider. The sufficiency of the standards adopted by the Secretary of the Treasury was committed to his judgment, to be honestly exercised, and if that were important there is no assertion here of bad faith or malice on the part of that officer in fixing the standards, or on the part of the defendant in the performance of the duties resting on him.

It is urged that there was denial of due process of law in failing to accord plaintiff in error a hearing before the Board of Tea Inspectors and the Secretary of the Treasury in establishing the standard in question, and before the general appraisers upon the re-examination of the tea. Waiving the point that the plaintiff in error does not appear to have asked for a hearing, and assuming that the statute did not confer such a right, we are of opinion that the statute was not objectionable for that reason. The provisions in respect to the fixing of standards and the examination of samples by government experts was for the purpose of determining whether the conditions existed which conferred the right to import, and they therefore in no just sense concerned a taking of property. This latter question was intended by Congress to be finally settled, not by a judicial proceeding, but by the action of the agents of the government, upon whom power on the subject was conferred.

It remains only to consider the contention that the provision of the statute commanding the destruction of teas not exported within six months after their final rejection was unconstitutional. The importer was charged with notice of the provisions of the law, and the conditions upon which teas might be brought from abroad, with a view to their introduction into the United States for consumption. Failing to establish the right to import, because of the inferior quality of the merchandise as compared with the standard, the duty was imposed upon the importer to perform certain requirements, and to take the goods from the custody of the authorities within a period of time fixed by the statute, which was ample in duration. He was notified of the happening of the various contingencies requiring positive action on his part. The duty to take such action was enjoined

upon him, and if he failed to exercise it the collector was under the obligation after the expiration of the time limit to destroy the goods. That plaintiff in error had knowledge of the various steps taken with respect to the tea, including the final rejection by the board of general appraisers, is conceded. We think the provision of the statute complained of was not wanting in due process of law.

Affirmed.

Mr. Justice BREWER and Mr. Justice BROWN, not having heard the argument, took no part in the decision of this case.

No. 296.

William J. Buttfield, Plaintiff in Error, *vs.* George R. Bidwell. } In error to the Circuit Court of the United States for the Southern District of New York.

[February 23, 1904.]

Mr. Justice WHITE delivered the opinion of the Court.

This action was brought by Buttfield to recover damages sustained by being prevented from importing into the United States a large number of packages of Country green teas, being four shipments from China. These teas, on re-examination by the board of general appraisers, were found to be inferior in quality to the standard prescribed by law; and Bidwell, as collector for the port of New York, so notified Buttfield. Thereupon the teas were withdrawn from the bonded warehouse and exported. Judgment was entered for Bidwell upon a directed verdict in his favor. The right to reversal of that judgment is predicated solely upon the asserted unconstitutionality of the tea inspection act of March 2, 1897. It will not be necessary to determine whether, even supposing the statute to be unconstitutional, a cause of action is stated in any of the four counts of the complaint below. The statute having been held to be valid in the opinion just announced in *Buttfield* v. *Stranahan*, the judgment must be and is hereby

Affirmed.

Mr. Justice BREWER and Mr. Justice BROWN took no part in the decision of this case.

No. 516.

William J. Buttfield, as Claimant of Seven Packages of Tea, Plaintiff in Error, *vs.* The United States. In error to the District Court of the United States for the Eastern District of New York.

[February 23, 1904.]

Mr. Justice WHITE delivered the opinion of the Court.

This was a proceeding for the condemation of seven packages of tea, which had been reimported after export from this country upon a final rejection of the tea by the board of general appraisers as not entitled to admission into the United States for consumption under the tea inspection act of March 2, 1897. Buttfield appeared as claimant, and a demurrer filed on his behalf to the information was overruled. The claimant failing to plead further, a final decree and judgment of forfeiture was entered. A reversal is asked upon the sole ground that the act of March 2, 1897, referred to, is repugnant to the Constitution of the United States. Upon the authority of *Buttfield* v. *Stranahan* just decided, the judgment below is

Affirmed.

Mr. Justice BREWER and Mr. Justice BROWN took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.